

**COMMONWEALTH OF KENTUCKY  
NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
FILE NO. AAO-26190-037 AND AAO-26191-037**

NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET,

PLAINTIFF,

VS.

LILY RESOURCES CO., INC.

DEFENDANT.

\*\*\*\*\*  
**SECRETARY'S ORDER**  
\*\*\*\*\*

THIS MATTER is before the Secretary upon the Report and Recommended Order of Hearing Officer Janet Thompson, after hearing, held July 17, 2003. Having considered said Report and Recommendations, Exceptions filed by the Cabinet, and Response filed by Defendant, Lily Resources Co., Inc., and being otherwise fully and sufficiently advised:

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

The Order to Abate and Alleviate, File Nos. AAO-26190 and AAO-26191, which was served on July 7, 2003, remains in effect, except with respect to requiring that a permitting action be submitted and obtained within 21 days for the off-permit slide resulting from the breach of the natural berm at the coal pit.

This is a final and appealable order.

So ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

NATURAL RESOURCES AND

ENVIRONMENTAL CABINET

    /s/ [8/28/03]      
HENRY C. LIST, SECRETARY

### **APPEAL RIGHTS**

**In accordance with the provisions of KRS 350.0305 and KRS 350.032, any person or party aggrieved by a Final Order of the Secretary resulting from a hearing may obtain a review of the Final Order by filing in Circuit Court a Petition for Review. Such Petition must be filed within thirty (30) days after the entry or rendition of the Final Order, and a copy of the Petition must be served upon the Cabinet.**

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing SECRETARY'S ORDER was, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, mailed by first-class mail, postage prepaid to:

HON. BILLY SHELTON  
JONES WALTERS TURNER & SHELTON  
151 N EAGLE CREEK DRIVE STE 101  
LEXINGTON KY 40509

LILY RESOURCES CO INC  
ATTN TYE KATAJA, PRESIDENT & DIRECTOR  
1440 SHILOH TRAIL EAST  
KENNESAW GA 30144  
Fax no. 770/424-0512

LILY RESOURCES CO INC  
ATTN CARL M HOWARD, VICE PRESIDENT & DIRECTOR  
RT 2 BOX 765  
MANCHESTER KY 40962

LILY RESOURCES CO INC  
ATTN HAROLD E GORDON, SECRETARY/TREASURER,  
DIRECTOR & AGENT FOR SERVICE OF PROCESS  
14 POPLAR RIDGE RD  
LONDON KY 40744

And a courtesy copy to:

HON STANTON L. CAVE  
PO BOX 910457  
LEXINGTON KY 40591-0457

HAZARD KY 41701

TWIN ENERGIES  
458 VILLAGE LANE

and hand-delivered to:

Hon. ALICE KINKEAD  
Natural Resources and  
Environmental Protection Cabinet  
Department of Law  
Fifth Floor, Capital Plaza Tower  
Frankfort, KY 40601

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NATURAL RESOURCES AND  
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PLAINTIFF,

VS.

LILY RESOURCES CO., INC.

DEFENDANT.

\* \* \* \* \*

**HEARING OFFICER'S REPORT AND RECOMMENDED SECRETARY'S ORDER**

\*\*\*\*\*

This matter came before the undersigned Hearing Officer for an Administrative Hearing on July 17, 2003, pursuant to 405 KAR 7:092 Section 11 and KRS 224.10-410 following the issuance of an Order to Abate and Alleviate (AAO) by the Secretary of the Natural Resources and Environmental Protection Cabinet, Henry C. List, to Defendant Lily Resources, Inc. on July 7, 2003.

Following the Administrative Hearing, and in conjunction with this Report, the Hearing Officer is entering an Order Affirming Secretary's Abate and Alleviate Order as to Lily Resources, With the Exception that the Remedial Measures be Revised and Recommending that an Amended Abate and Alleviate Order be Entered Naming Twin Energies as a Defendant. A copy of the Hearing Officer's Order is attached and incorporated into this Report and Recommendation.

This Report and Recommended Secretary's Order is required by 405 KAR 7:092 Section 11(4), which references 405 KAR 7:091, Section 3, and allows the parties an opportunity to file any exceptions and allows the Secretary to further review this matter after hearing.

The parties are reminded that the Secretary's AAO, which was served on July 7, 2003, remains in effect notwithstanding any exceptions which may be filed in response to this Report and Recommended Secretary's Order.

Based upon the foregoing, I recommend that the Secretary enter the attached recommended Order, which affirms his July 7, 2003 AAO, with the exception that Lily Resources be required to perform only those remedial measures necessary to stabilize the emergency existing on the sites. In addition, the order directs the preparation of an Amended Order to Abate and Alleviate naming Twin Energies as a Defendant.

So RECOMMENDED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_/s/[7/22/03]\_\_\_\_\_  
JANET C. THOMPSON  
HEARING OFFICER  
OFFICE OF ADMINISTRATIVE HEARINGS  
35-36 Fountain Place  
Frankfort, Kentucky 40601  
Telephone: (502) 564-7312  
Fax: (502) 564-4973

### **EXCEPTION RIGHTS**

**Pursuant to KRS 350.0301 any party may file exceptions to this Report and Recommendation within fourteen (14) days of service of this Report. A party may file a Response to any Exceptions within twenty-one (21) days of service of this Report. The Secretary will then consider this Report, any Exceptions, any Responses and the recommended Order and decide this case.**

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing REPORT AND RECOMMENDATIONS was, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, mailed by first-class mail, postage prepaid to:

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Fifth Floor, Capital Plaza Tower  
Frankfort, KY 40601

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\*\*\*\*\*  
**SECRETARY'S ORDER**  
\*\*\*\*\*

THIS MATTER is before the Secretary upon the Report and Recommended Order of Hearing Officer Janet Thompson. Having considered said Report and Recommendations and any exceptions thereto, and being otherwise fully and sufficiently advised:

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. The Hearing Officer's Report and Recommendations entered in the record on \_\_\_\_\_, 2003, is ADOPTED and incorporated herein by reference.
2. The Order to Abate and Alleviate, File Nos. AAO-26190 and AAO-26191, which was served on July 7, 2003, remains in effect, except with respect to requiring that a permitting action be submitted and obtained within 21 days for the off-permit slide resulting from the breach of the berm.
3. An Amended Order to Abate and Alleviate, naming as Defendants both Lily Resources Co., Inc. and Twin Energies shall be immediately prepared for my signature.

4. This is a final and appealable order.

So ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

NATURAL RESOURCES AND  
ENVIRONMENTAL CABINET

---

HENRY C. LIST, SECRETARY

### **APPEAL RIGHTS**

**In accordance with the provisions of KRS 350.0305 and KRS 350.032, any person or party aggrieved by a Final Order of the Secretary resulting from a hearing may obtain a review of the Final Order by filing in Circuit Court a Petition for Review. Such Petition must be filed within thirty (30) days after the entry or rendition of the Final Order, and a copy of the Petition must be served upon the Cabinet.**

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing SECRETARY'S ORDER was, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, mailed by first-class mail, postage prepaid to:

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